

Commonwealth of Massachusetts
William F. Weld, Governor
A. Paul Cellucci, Lt. Governor

Massachusetts Executive Office
of Communities & Development

A GUIDE FOR USING NON-CRIMINAL DISPOSITION FOR BY-LAW ENFORCEMENT

This manual was initially produced under a cooperative arrangement between the Town of Canton, Massachusetts and the Incentive Aid Program of the Massachusetts Executive Office of Communities and Development. (revised edition - June, 1991)

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INTRODUCTION

In 1977, legislation was adopted (c. 401: 1977) which inserted a new section into the General Laws (MGL, c. 40, s. 21D) authorizing cities and towns to provide for the "non-criminal disposition" of violations of ordinances, by-laws, rules and regulations.

This manual was first issued in 1987 as an outgrowth of a study conducted under an Incentive Aid grant awarded by the Massachusetts Executive Office of Communities and Development to the towns of Canton, Avon, Sharon, and Stoughton, to determine the feasibility of adopting the non-criminal disposition statute and to design a plan for its implementation. Attorney Michael Curran conducted the study for the four towns, and is the primary author of this manual.

During the course of that study, it became evident that the guidelines being developed had broad and general application to all Massachusetts cities and towns, and that the implementation procedures being developed would be useful to many communities.

This revised version is being issued in 1991 to address a major change in the law, allowing fines for non-criminal violations to be collected by cities and towns. Much of the original manual text advising communities on the process to follow in adopting the non-criminal process remains the same, with appropriate updating to reflect the change made by Chapter 470 of the Acts of 1990.

READER'S NOTE: In preparing this manual, rather than refer continuously to "by-law or ordinance," the term "by-law" is generally used. As the reader is doubtlessly aware, the actions of town or city councils are referred to as "ordinances." While use of one term or the other may serve to identify the legislative body adopting the measure, in all other respects, the enactments are of the same force.

ORGANIZATION OF THIS MANUAL

On the pages which follow, a series of questions are posed, and answers provided, which are designed to guide the reader through the statute and to those points of greatest interest.

Some readers may wish to start at the beginning and read the material through as presented, while others may find it more useful to their purposes to focus on their particular inquiries regarding the use of the non-criminal procedure. It is hoped that this format will best suit the needs of both types of readers.

1. WHAT DOES NON-CRIMINAL DISPOSITION MEAN?

Unless your community has accepted the provisions of MGL, c. 40, s. 21D, the method (with limited exceptions) by which your local 'laws' are enforced is through a **criminal complaint** procedure in the district court. This process is slow, cumbersome, and in the minds of many municipal officials, "more trouble than it is worth." As a consequence of this rather widely held view, municipal officials seek to enforce the provisions of local laws through court action only as a last resort, usually confined to cases of the most extreme, blatant, or offensive violation circumstances.

From the point of view of the judiciary, processing complaints for violations of municipal 'laws' must, unfortunately, compete with a myriad of other criminal and civil matters of varying complexity and severity. Court calendars are necessarily burdened by the broad scope of the judiciary's duties. The availability of the 'non-criminal disposition' process alleviates to a great degree the involvement of court personnel, thus enabling municipal officials to provide effective, consistent enforcement of their local by-laws.

'Non-criminal disposition' takes the stigma of the criminal complaint process out of the local enforcement effort, and obviates, in a majority of cases, the need to 'prove' a case in a trial setting. Instead, these local laws may be enforced by a process similar to that used for payment of parking fines, a process with which most people are familiar.

Use of the 'non-criminal' procedure allows a local enforcement person to write a 'ticket' which sets a specific sum of money to be paid as a penalty for the violation of the by-law. The penalty is paid to the city or town clerk*, or the offender may request a district court hearing to be held on the matter. The request for a hearing must be made within twenty-one days following the date the ticket is issued.

The process is reduced in its complexity for all concerned -- the local enforcement person, the offender, and district court personnel. Fines paid by the offender are deposited in the municipal treasury.

2. WHAT IS THE AUTHORITY FOR THIS PROCEDURE?

In 1977, the legislature inserted a new section "21D" into Chapter 40 of the Massachusetts General Laws, authorizing municipal governments to use a non-criminal procedure as an alternative method to enforce their local 'laws.' The statute set out in very specific terms the procedures to be followed, but does permit broad discretion on the part of the municipality to determine the number and variety of offenses which might be punished through this process. (For a complete text of the statute, see **Appendix A.**)

* new payment procedure authorized by amendment of c. 40, s. 21D by Chapter 470 of the Acts of 1990, effective March 29, 1991.

3. WHAT IS MEANT BY THE TERM 'ENFORCING PERSON'?

The statute provides that 'enforcing persons' may be designated for specific provisions of local by-laws or regulations. For example, the dog officer would be designated an enforcement person for the purposes of the animal control by-law, the building inspector (zoning enforcement officer) would be designated an enforcement person for the purposes of the zoning by-law, and the health agent (or board of health members) would be designated as an enforcement person(s) for the purposes of regulations adopted by the board of health. In most cases, police officers would also be authorized to enforce the same provisions of local by-laws, rules and regulations by this method. Other appropriate personnel of the town would be designated as enforcement persons for those particular provisions of local by-laws, rules or regulations for which they have primary responsibility.

4. WHAT LOCAL 'LAWS' CAN BE ENFORCED BY THIS METHOD?

The statute provides that any ordinance or by-law, or any rule or regulation of any municipal officer, board or department, the violation of which is subject to a specific penalty, may be enforced by this method. Examples of local laws enforced by non-criminal disposition may be found in **Appendix E** of this manual, but there may be in any municipality special local laws which lend themselves to enforcement under these provisions.

5. ARE ANY OTHER STATE LAWS INVOLVED?

Yes. Three state laws now require cities and towns to have citations available for the non-criminal enforcement of violations relating to:

- o statutes governing the operation of bicycles (c. 85, ss. 11A & 11B)
- o state pedestrian control regulations (c. 90, s. 18A)
- o state "anti-littering" law (c. 270, s. 16).

6. HOW IS THE STATUTE IMPLEMENTED?

In order to take advantage of this non-criminal procedure, a city or town must first adopt a by-law or ordinance authorizing its use. The by-law must, in addition, specify if the use of the procedure is to be mandatory or only one option available. The by-law must also specify:

- o who the enforcing persons are to be; and
- o the specific penalty to be applied for violations of each provision.

A sample implementing by-law, which incorporates these requirements, is included in this manual as **Appendix C**.

Prior to the by-law's adoption, it will be necessary to secure approval of the state's District Court Department for the non-criminal citation form. In January, 1991, the District Court Department approved the sample citation form included as **Appendix D** of this manual.

These two steps:

- implementation of a by-law authorizing the non-criminal method of enforcement and specifying the penalties to be enforced for each by-law violation, and
- securing approval of the District Court Department for the citation form

must be completed before non-criminal disposition procedures can be implemented locally. A detailed process leading to implementation is described under **8. HOW DO WE BEGIN?** beginning on page 8 of this manual.

7. WHAT LOCAL 'LAWS' ARE MOST COMMONLY ENFORCED BY THIS METHOD?

Communities are using the non-criminal process to enforce a variety of local laws and regulations ranging from trash disposal violations to failure to remove snow and ice from sidewalks. Coastal towns are enforcing shellfish regulations by this method. Other common areas of use include: animal control laws; 'police' regulations (e.g., false burglar alarms, public consumption of alcoholic beverages, littering); and violations of zoning by-laws (e.g., sign provisions, storage of 'junk' motor vehicles). Several communities with "no smoking" restaurant bans are enforcing this rule with establishment of a non-criminal fine.

The statute, appropriately, allows each community to determine for itself those local laws which are best enforced by this method.

8. HOW DO WE BEGIN?

a. Determination of Local Interest - The first step in the implementation process is to determine the extent of local interest in having this procedure available as an alternative method of enforcement. This fact should be stressed at any initial meeting held on "21D" implementation; if adopted, it will be another method to be used to secure enforcement of local by-laws. Making this method of enforcement available leaves in place all other existing enforcement methods; in no way is it to be construed as a substitute method which must be used instead of any other available method. If "21D" is implemented, it provides another option to be used at the discretion of the enforcing person.

It is recommended that a meeting be held which would include representation, at a minimum, from the police department, building inspector's office, board of health, conservation commission, the town counsel and the animal control (dog) officer. If in a shore community, the harbormaster, shellfish wardens, and wharfingers might also be invited. Any other local officials who might have special or unusual enforcement responsibilities should also be invited. The meeting should be used to review "21D" and make some determination as to whether or not the town sees any benefits in its adoption.

Perhaps these questions might be posed:

Are there local by-laws which are not being enforced because:

- they do not seem to merit citations as criminal offenses?
- the criminal procedure involved in prosecuting offenses is too complicated to justify its use except in extraordinary cases?
- municipal officials do not have the time to spend preparing a case and appearing in court to prosecute it, and still be able to perform their primary responsibilities?

If any of these are answered in the affirmative, they should serve as a beginning for the development of a list of offenses which might be specifically applicable to the "21D" enforcement procedure.

b. Identification of Sections - If the preliminary meeting on the subject has produced affirmative answers to the questions above, the meeting might adjourn with an agreement that each participant review the by-laws or regulations for which their office is primarily responsible, keeping in mind the matters discussed at the first meeting. After allowing time for each person involved to conduct this review and prepare a preliminary list of specific sections, along with a recommendation of the penalties to be imposed for violations, a second meeting should be held to review and compare the compiled lists.

This meeting should lead to some preliminary conclusions regarding the scope and variety of by-laws that might be included under the "21D" procedure, the penalties to apply, and identification of appropriate enforcing personnel.

c. Preliminary Draft By-law - The town counsel, or some other attorney chosen for the purpose, should be able to prepare a draft by-law incorporating all of the ideas and concepts discussed and decided upon at the previous meetings held on the subject. The counsel may also wish to speak individually with officials in departments who will have enforcement responsibilities, to assure complete understanding of all provisions to be included in the draft by-law.

d. Review Session - After the draft has been completed and circulated among all the affected departments and individuals, an additional meeting should be held for comment and criticism of the draft. It might be a good idea to open this session by special invitation to the finance (warrant or advisory) committee, in particular, and the public in general for comment. Time spent at this stage to explain the rationale behind the implementation of "21D" will be of immeasurable advantage when the matter is ultimately put to the town meeting for adoption.

At this point, it might be beneficial to consider if the by-law might be submitted for enactment in several stages, i.e., that only the portion relating to enforcing one or two segments (e.g., general 'police' regulations and/or health regulations) be adopted first, with other segments to follow as the town gains experience in the use of the procedure, and the public grows more aware of this new enforcement option.

e. Final Draft, Adoption - Following this meeting, a final draft of the proposed by-law should be prepared incorporating all of the relevant comments and criticisms raised at the review session. This draft should then be submitted to the town meeting, by appropriate warrant article, for enactment.

f. Post-Enactment Steps - Following adoption by the town meeting and submission to the department of the attorney general for its review, final details of the implementation should be worked out with the local enforcing persons and the city or town clerk, who will be collecting the fines. The proposed citation form should be prepared and submitted through the local district court to the chief justice of the district court (District Court Department) for approval. Other forms necessary for use in the town should be prepared and distributed for such use. At this point, the town could consider adoption of a public awareness program which would precede full implementation of the "21D" procedure. Enforcing persons could issue tickets during an initial period of thirty, sixty, or ninety days stamped with the word **WARNING** and not seek any 'real' enforcement until this "acquaintance" period is completed. However, pre-existing methods of enforcement, including the criminal complaint procedure, should continue to be used as situations warrant.

A training session for all personnel who are to be enforcing persons should be held to acquaint them with the procedures to be used. This is especially important for all non-police personnel who may have responsibilities under the program. A sample procedures guide is included as **Appendix F** and may be helpful in organizing a local training session.

9. ARE THERE SOME GUIDELINES ON FINES?

Yes. It appears that fines in the \$25.00 - \$50.00 range may be the most effective to apply under these non-criminal procedures. It is, generally, a large enough amount for the offender to notice, but low enough so that the offender will pay the ticket and not choose to contest it. One community, which had adopted fines in the range of \$100.00 for offenses, found that a majority of its citations were being contested. The use of an ascending scale for offenses may be considered, but local officials must recognize that a fine scale will require additional administrative duties to assure that each offender's record is kept up to date, and is available for access to determine the proper charge to be applied. In establishing fines, the town counsel and enforcing personnel should review state laws which impose maximum fines for certain offenses (See, for example, c. 85, s. 11C, \$50.00 maximum - bicycle violations; c. 90, s. 18A, \$2.00 maximum - pedestrian control violations; c. 140, s. 173A, \$50.00 maximum - dog violations; and c. 270, s. 16A, \$50.00 maximum - littering violations.)

10. WHAT TYPE OF FORMS DO WE NEED?

a. CITATION FORMS: The town will need citation forms to be used by the enforcing persons. A copy of the form approved by the state's District Court Department is attached as **Appendix D**. The statute requires that the forms be prepared in triplicate: one for the offender; one for the municipality; and

one for the district court. The municipality might want to have the town copy printed on card stock in order to facilitate the organization of a permanent file. Or, the town could have the forms printed in sets of FOUR, so that the enforcing person/department could also keep a copy. This approach would be useful if an "ascending fines" policy is adopted.

In addition to the description of the incident recorded on the citation form, enforcement persons (other than police officers) should be directed to keep their own notes or a memorandum concerning the incident. Should a hearing be requested by the person cited, these notes will be needed. The importance of a contemporary record of the events and circumstances leading to the issuance of the citation cannot be stressed too strongly.

The list of provisions subject to enforcement under the non-criminal procedure and the schedule of fines to be applied for violations should be contained in the citations book for ready reference by enforcing persons. A sample of the list from the citation book used in the town of Concord is included as **Appendix E**.

b. INSTRUCTION SHEETS: A set of detailed instructions should be issued, particularly designed to guide the non-police enforcement personnel who will be authorized to issue citations. A sample set of such instructions, based on materials from several towns, is included as **Appendix F**. These instruction sheets, tailored to the needs of the town, while useful and desirable, should only be considered as a supplement to actual 'hands-on' training held prior to the implementation of the program and on an ongoing, periodic basis.

c. **DOCKET LISTING:** A list of all citations issued, the date of issuance, the date by which either the fine is payable or the offender has to request a district court hearing, and action taken, should be kept by one coordinator for the town. Regular communication between the city or town clerk, who is receiving the fines, and the local police prosecutor (who is usually in close contact with the district court) should be maintained. Tracking the citations is necessary for accurate follow-up. A sample of the form used for this purpose in Barnstable is attached as **Appendix G**.

This list will be used to note when a request for a hearing is made, and to arrange for the town's case to be ready on the date set for the hearing by the court. It will be used to note when payments have been made, thus disposing of the matter. It will also be used to keep track of those citations issued for which there is neither a request for a hearing on file, nor is payment made.

11. WHAT OPTIONS ARE AVAILABLE TO THE OFFENDER?

The citation which is issued contains on its face (see **Appendix D**) all of the information which the offender requires in order to avail himself of the options available to him.

Within 21 calendar days following the date the citation is issued, the offender may:

- appear in person at the city/town clerk's office to pay the fine; or
- pay the prescribed fine to the city/town clerk by mail (check, money order, or postal note); or
- request a hearing from the district court on the citation. This request must be made in writing.

12. WHAT HAPPENS IF THE FINE IS PAID?

Payment of the fine, either in person or by mail, operates as final disposition of the case. The city or town clerk is required to notify the district court when the fine is paid (see C. 470, Acts of 1990).

13. WHAT HAPPENS IF THE OFFENDER HAS NOT PAID THE FINE OR REQUESTED A HEARING?

Before seeking to issue a criminal complaint when there has been a failure to respond to the non-criminal process described above, and where the enforcement person is not a police officer, it is suggested that the enforcement person and police prosecutor (or designated local coordinator)

meet and review in detail the incident leading to the citation. The prosecutor (coordinator) might also want to consult with the police chief and/or the department head involved to determine if notes kept on the incident are sufficient to warrant follow-through as a criminal matter. If the community believes it has the necessary evidence to proceed, bringing the matter to court as a criminal action should follow. Depending on the volume of non-criminal citations issued, which are subject to a hearing requested by the offender or on which the town chooses to pursue a criminal complaint, it might be desirable to establish a schedule for holding such hearings with the district court, both for the court's convenience, and the convenience of municipal personnel who may need to attend the hearing(s).

14. WHAT HAPPENS IF A HEARING IS REQUESTED?

If a hearing is requested, it may be held before a judge of the court, the clerk magistrate, or an assistant clerk, as the court may determine in any particular case. If the court finds that the offense was not committed, or that the person appearing did not commit it, the matter will be dismissed. If the court finds that the offense cited was committed by the offender, such person may then pay the fine and the matter is still disposed of under these non-criminal procedures (no probation record kept of the proceeding). Should the offender still refuse to pay, the matter then must be pursued by the town as a criminal matter.

APPENDICES

Appendix A - text; M.G.L., c. 40, s. 21D

Appendix B - Interpretation of Non-Criminal Disposition Statute

Appendix C - Sample Amendment to General By-laws
Sample Zoning By-law Amendment
Sample Amendment to Board of Health Regulations

Appendix D - Approved Citation Form

Appendix E - Provisions of Concord, MA by-laws subject to
non-criminal disposition method of enforcement

Appendix F - Procedures Guide: Implementing Non-Criminal Disposition

Appendix G - Citation Tracking Form

APPENDIX A

TEXT OF MGL, CHAPTER 40, SECTION 21D; NON-CRIMINAL DISPOSITION STATUTE

40:21D. Noncriminal disposition of ordinance, by-law, or municipal rule and regulation violations.

Section 21D. Any town may by ordinance or by-law not inconsistent with this section provide for noncriminal disposition of violations of any ordinance or by-law or any rule or regulation of any municipal officer, board or department the violation of which is subject to a specific penalty.

Any such ordinance or by-law shall provide that any person taking cognizance of a violation of a specific ordinance, by-law, rule or regulation which he is empowered to enforce, hereinafter referred to as the enforcing person, as an alternative to initiating criminal proceedings shall, or, if so provided in such ordinance or by-law, may, give to the offender a written notice to appear before the clerk of the district court having jurisdiction thereof at any time during office hours, not later than twenty-one days after the date of such notice.

Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received.

The enforcing person shall, if possible, deliver to the offender a copy of said notice at the time and place of the violation. If it is not possible to deliver a copy of said notice to the offender at the time and place of the violation, said copy shall be mailed or delivered by the enforcing person, or by his commanding officer or the head of his department or by any person authorized by such commanding officer, department or head to the offender's last known address, within fifteen days after said violation. Such notice as so mailed shall be deemed a sufficient notice, and a certificate of the person so mailing such notice that it has been mailed in accordance with this section shall be prima facie evidence thereof.

At or before the completion of each tour of duty, or at the beginning of the first subsequent tour of duty, the enforcing person shall give to his commanding officer or department head those copies of each notice of such a violation he has taken cognizance of during such tour which have not already been delivered or mailed by him as aforesaid. Said commanding officer or department head shall retain and safely preserve one copy and shall, at a time not later than the next court day after such delivery or mailing, deliver the other copy to the clerk of the court before which the offender has been notified to appear. The clerk of each district court and of the Boston municipal court shall maintain a separate docket of all such notices to appear.

Any person notified to appear before the clerk of a district court as hereinbefore provided may so appear and confess the offense charged, either personally or through a duly authorized agent or by mailing to the city or town clerk of the municipality within which the violation occurred together with the notice such specific sum of money not exceeding three hundred dollars as the town shall fix as penalty for violation of the ordinance, by-law, rule or regulation. Such payment shall if mailed be made only by postal note, money order or check. Upon receipt of such notice, the city or town clerk shall forthwith notify the district court clerk of such payment and the receipt by the district court clerk of such notification shall operate as a final disposition of the case. An appearance under this paragraph shall not be deemed to be a criminal proceeding. No person so notified to appear before the clerk of a district court shall be required to report to any probation officer, and no record of the case shall be entered in any probation records.

Such hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall direct, and if the judge, clerk, or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the person so notified to appear, the person so notified shall be permitted to dispose of the case by paying the specific sum of money fixed as a penalty as aforesaid, or such lesser amount as the judge, clerk or assistant clerk shall order, which payment shall operate as a final disposition of the case. If the judge, clerk, or assistant clerk shall, after hearing, find that violation alleged did not occur or was not committed by the person notified to appear, that finding shall be entered in the docket, which shall operate as a final disposition of the case. Proceedings held pursuant to this paragraph shall not be deemed to be criminal proceedings. No person disposing of a case by payment of such a penalty shall be required to report to any probation office as result of such violation, nor shall any record of the case be entered in the probation records.

If any person so notified to appear before the clerk of a district court fails to pay the fine provided hereunder within the time specified or, having appeared, does not confess the offense before the clerk or pay the sum of money fixed as a penalty after a hearing and finding as provided in the preceding paragraph, the clerk shall notify the enforcing person who issued the original notice, who shall determine whether to apply for the issuance of a complaint for the violation of the appropriate ordinance, by-law, rule or regulation.

As used in this section the term "district court" shall include, within the limits of their jurisdiction, the municipal court of the city of Boston and the divisions of the housing court department of the trial court.

The notice to appear provided for herein shall be printed in such form as the chief justice of the municipal court of the city of Boston shall prescribe for said court, and as the chief justice of the district courts shall prescribe for the district courts. Said notice may also include notice of violations pursuant to section eleven C of chapter eighty-five, section eighteen A of chapter ninety, section sixteen A of chapter two hundred and seventy, and section one hundred and seventy-three A of chapter one hundred and forty. Any fines imposed under the provisions of this section shall enure to the city or town for such use as said city or town may direct. This procedure shall not be used for the enforcement of municipal traffic rules and regulations. Chapter ninety C shall be the exclusive method of enforcement of municipal traffic rules and regulations.

Appendix B

Interpretation of the Non-Criminal Disposition Statute:

Section 21D provides an alternative method to obtain compliance with the provisions of municipal ordinances, by-laws, rules and regulations. Without the non-criminal disposition procedure available, towns can enforce local by-laws only through the issuance of a criminal complaint in the District Court. To prosecute violators by this method undoubtedly has a certain stigma attached to it. The net result is that many violations are not pursued in towns because of: (1) the difficulties inherent in prosecuting under these procedures; (2) the time required to prepare and present the municipality's case; and (3) a reluctance to use the procedure because of the negative image invoked by a criminal proceeding.

Section 21D, in essence, consists of two parts: (1) authorizing the use of the non-criminal procedure by adoption of a local bylaw; and (2) describing in precise detail the steps municipal officers must follow to apply the non-criminal procedure.

The Local By-law

A by-law or ordinance authorizing the use of the non-criminal procedure must be authorized by the town.

The by-law/ordinance must provide that a person is empowered to enforce each specific ordinance, by-law, rule, and/or regulation to be enforced by this method, with the application of a specific penalty for each violation. The non-criminal procedure is available as an alternative to initiating a criminal proceeding. Remember, the local by-law must state whether the non-criminal procedure is to be an alternative or exclusive method for by-law enforcement. A maximum penalty of \$300.00 is established in c. 40, s. 21D for non-criminal violations.

It is not sufficient to simply vote to accept the provisions of c. 40, s. 21D in order to secure the benefit of the non-criminal disposition alternative. Reasons for this are discussed below:

As a general rule, individual sections of municipal by-laws and ordinances do not provide specific penalties for violations of their

provisions. Prior to the insertion of section 21D in the state's laws, the penalty to be imposed for a violation would be determined by the court. Thus, many present by-laws provide only in a general way the penalty for violations. In Stoughton, for example, the by-law in effect in 1985 stated: "The penalty of any violation of these by-laws shall, when not otherwise provided for, be the forfeiture and payment for each offense of a fine not exceeding \$50.00." Similar language was found in several other towns, including Canton (\$20.00 maximum penalty); Sharon (\$50.00 maximum), and Avon (\$200.00 maximum).

(NOTE: It would seem desirable for each town to amend its provisions to permit imposition of the highest fine legally permissible and not to impose fines at limits which, in today's economic terms, are so low they fail to serve as an economic deterrent.)

As a general rule, individual sections of municipal by-laws and ordinances do not specify who is to be responsible for enforcing the by-laws' provisions. Although this may not be necessary when enforcement is always a criminal prosecution (and it is assumed it will be by police officers), for the purpose of the non-criminal procedure, the enforcing individual(s) must be specified. In some instances, the by-law might note any other officers and employees, in addition to the primary enforcing person, who are authorized to issue citations for violations of a particular by-law.

While the language of the statute is not crystal clear, it appears from the experience of communities using this procedure that it is best to specifically enumerate in each applicable by-law provision:

- if the non-criminal procedure is to be available;
- if the non-criminal procedure is optional or mandatory;
- which town officers and employees are designated as enforcing persons;
- the specific penalty to be applied for violations of the section.

For example:

"No person shall place, throw or deposit any trash, bottles or cans, refuse, scrap or other waste material of any kind on or in any public way or place within the town, or within twenty yards thereof. Violations of this section may be enforced, in the manner provided in MGL, c. 40, s. 21D, by any police officer, the building inspector, or by the health agent of the town. A penalty of \$25.00 shall be imposed for each violation of this section. Each day on which a violation exists shall be deemed to be a separate violation of this section."

Appendix B (continued)

As a practical matter, unless the town's by-laws are to be completely rewritten at the time the non-criminal disposition alternative is inserted, it will likely be more expedient to insert one new section into the town by-laws authorizing use of the procedure, and, by reference to existing sections, identify the enforcing persons and penalties to be applied. For example:

"Violation of the following by-law sections may be enforced in the manner provided in MGL, c. 40, s. 21D; for the purpose of this section, the specific penalty which is to apply for violation of each such section shall be as listed below and the municipal officers or employees whose titles are listed under each section shall be deemed to be enforcing officers for each such section."

Article 1, Section 1 - Smoking in a Public Place

Penalty: \$25.00

Enforcing Persons: Police Officers, Health Agent

Article 1, Section 2 - Zoning By-law

Penalty: \$100.00

Enforcing Persons: Building Inspector, Police officers

(etc.)

In certain cases, it may be deemed undesirable to ever use the criminal route for enforcing specific by-law provisions, and in such cases, it is suggested, that the word "shall" might be substituted for the word "may" in the first sentence as set out above. It should be noted, however, that such action may leave no way to enforce the law should the offender fail to respond to the non-criminal citation. (See the remedy provided in c. 90, s. 18A for failure to respond in those cases).

The main feature of section 21D addresses the specific procedures to be followed in order to use the non-criminal enforcement option. These provisions are summarized below:

1. A written notice is to be given to the person charged with the violation (the offender). Whenever practicable, the notice shall be signed by the offender. If it is not possible to give a notice to the offender at the time and place of the violation, it may be mailed to the person's last known address within the next fifteen days following the offense.
2. The notice shall direct the offender to appear before the municipal clerk at any time during ordinary office hours within the 21 days following the date of the notice.

Appendix B (continued)

3. In lieu of appearing before the municipal clerk, the offender may pay, by mail, the specific sum of money as stated on the notice as the penalty for that violation. Payment is the final disposition of the case.
4. As an alternative, the offender may request in writing a hearing on the violation within 21 days following receipt of notice of the violation. The hearing may be held before a judge, a clerk, or an assistant clerk, as the court may direct. If, at the hearing, it is found that the offender did commit the violation, the matter may still be disposed of by having the offender pay the set fine. If the finding is that the offense was not committed, or that the charged offender did not commit it, that finding is entered as the final disposition of the case.
5. If the offender does not appear, or does not pay the penalty, either by confessing, or, after a finding by the court, the court must notify the enforcing officer who wrote the original notice who must then determine whether to seek a criminal complaint.
6. The forms used are to be (at least) in triplicate:
 - 1 to the offender;
 - 1 to the department citing the violation;
 - 1 to the court.

The forms must be approved by the Chief Justice of the District Courts (see form attached as **Appendix D**). (Chief justices of the state's Housing Courts must approve forms to be used in that venue.)

The form is to contain space for:

- the name and address (if known) of the offender;
 - the specific offense charged;
 - time and place to pay fine or request hearing;
 - signature of enforcing officer;
 - signature of the offender.
7. At or before the completion of each work day (or at the beginning of the next one), the enforcing officer shall deliver to his department head copies of the notices he has written. One copy shall be kept by the issuing department and one shall be delivered to the district court.

NOTE: Provisions of other state laws allowing non-criminal disposition of violations include: state and local laws and regulations relating to the registration, equipment, and operation of bicycles (c. 85, s. 11C); local pedestrian control violations (c. 90, s. 18A); motor vehicle parking regulations (c. 90, s. 20A); and the state's "anti-littering" law (c. 270, s. 16A). Specific provisions of these laws should be reviewed to determine if the city or town is enforcing these laws by application of fines as determined by state law, etc.

APPENDIX C

PROPOSED AMENDMENT TO GENERAL TOWN BY-LAWS

ARTICLE I

SECTION 1 - ENFORCEMENT

a) Criminal Complaint

Whoever violates any provision of these by-laws may be penalized by indictment or on complaint brought in the district court. Except as otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation, or offense, brought in this manner, shall be three hundred dollars.

b) Non-criminal disposition

Whoever violates any provision of these by-laws, the violation of which is subject to a specific penalty, may be penalized by a non-criminal disposition as provided in General Laws, Chapter 40, section 21D. The non-criminal method of disposition may also be used for violations of any rule or regulation of any municipal officer, board, or department which is subject to a specific penalty.

Without intending to limit the generality of the foregoing, it is the intention of this provision that the following by-laws and sections of by-laws are to be included within the scope of this subsection, that the specific penalties as listed here shall apply in such cases and that in addition to police officers, who shall in all cases be considered enforcing persons for the purpose of this provision, the municipal personnel listed for each section, if any, shall also be enforcing persons for such sections. Each day on which any violation exists shall be deemed to be a separate offense.

GENERAL BY-LAWS

Article X

Section 10	Fireworks, etc.	\$50.00
Section 12	Rude, indecent speech or behavior	\$50.00
Section 13	Loitering	\$50.00
Section 20	Curfew	\$50.00
Section 21	Dumping refuse on private property, without permission (Health Agent)	\$50.00
Section 22	Anti-noise regulations (Health Agent)	\$50.00

Appendix C (continued)

Section 23	Junk Automobiles, etc.	\$20.00
Section 25	Invasion of Privacy	\$50.00
Section 26	Numbering of Buildings (Building Inspector, Fire Chief, Health Agent)	\$50.00
Section 27	Distribution of commercial advertising materials	\$50.00
Section 28	Discharge of firearms	\$50.00
Section 29	Public consumption of alcoholic beverages	\$50.00

Article XV

Snow and Ice removal (Fire Chief)	\$25.00
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Article XVI

Regulation of Boating (Harbormaster)	
1st offense	\$ 20.00
2nd offense	\$ 50.00
3rd offense	\$100.00
4th and subsequent offenses	\$200.00

SAMPLE AMENDMENT TO ZONING BY-LAW

SECTION XIII: B. ENFORCEMENT

(2) Non-criminal disposition - In addition to the procedures for enforcement as described above, the provisions of this zoning by-law may also be enforced, by the building inspector, by non-criminal complaint pursuant to the provisions of MGL c. 40, s. 21D. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for violation of any provision of this by-law shall be: \$25.00 for the first offense; \$50.00 for the second offense; \$100.00 for the third offense; and \$200.00 for the fourth and each subsequent offense.

SAMPLE AMENDMENT TO BOARD OF HEALTH REGULATIONS

CHAPTER XVII - Penalties - Board of Health Regulations

(a) Criminal Complaint - Whoever violates any provision of these rules and regulations may be penalized by indictment or on complaint brought in the District Court. Except as may otherwise be provided by law, and as the district court may see fit to impose, the maximum penalty for any violation of these provisions shall be \$300.00 for each offense.

(b) Non-criminal Disposition - Whoever violates any provision of these rules and regulations may, in the discretion of the Health Agent (members of the Board of Health), be penalized by a non-criminal complaint pursuant to the provisions of MGL chapter 40, section 21D. For the purpose of this provision the penalty to apply in the event of a violation shall be as follows: \$25.00 for the first offense; \$50.00 for the second offense; \$100.00 for the third offense; and \$200.00 for the fourth and each subsequent offense. Each day on which a violation exists shall be deemed to be a separate offense.

APPENDIX D

NONCRIMINAL DISPOSTION CITATION FORM AS APPROVED BY THE DISTRICT COURT*

CITY [or TOWN] OF [Name] NOTICE OF VIOLATION OF CITY ORDINANCE [or TOWN BY-LAW], RULE OR REGULATION	
DATE OF THIS NOTICE _____	
NAME OF OFFENDER _____	
ADDRESS OF OFFENDER _____	
CITY, STATE, ZIP CODE _____	DATE OF BIRTH OF OFFENDER _____
MY OPERATOR LICENSE NUMBER _____	MY VMS REGISTRATION NUMBER _____
OFFENSE: _____ _____ _____	
TIME AND DATE OF VIOLATION _____ (A.M.) (P.M.) ON _____ 19____	
LOCATION OF VIOLATION _____	
AT _____	
SIGNATURE OF ENFORCING PERSON _____	ENFORCING DEPARTMENT _____
I HEREBY ACKNOWLEDGE RECEIPT OF THE FOREGOING CITATION	
X _____	
<input type="checkbox"/> Unable to obtain signature of offender. Date Mailed _____	
<p>THE NONCRIMINAL FINE FOR THIS OFFENSE IS \$ _____.</p> <p>YOU HAVE THE FOLLOWING ALTERNATIVES IN THIS MATTER:</p> <p><i>Either option (1) or option (2) will operate as a final disposition, with no resulting criminal record.</i></p> <p>(1) You may choose to pay the above fine, either by appearing in person or through a duly authorized agent, or by mailing a check, money order or postal note WITHIN 21 DAYS OF THE DATE OF THIS NOTICE to:</p> <p style="text-align: center;">[City or Town Clerk] [Street Address] [City or Town, MA Zipcode].</p> <p>(2) If you desire to contest this matter, you may do so by making a written request for a noncriminal hearing, and enclosing a copy of this citation, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE to:</p> <p style="text-align: center;">Clerk-Magistrate [Name] District Court [Street Address] [City or Town, MA Zipcode] Attn: 21D Noncriminal Hearings.</p> <p>(3) If you fail to pay the above fine or to request a hearing within 21 days, or if you fail to appear for the hearing or to pay any fine determined at the hearing to be due, a criminal complaint may be issued against you.</p>	
<input type="checkbox"/> I HEREBY ELECT THE FIRST OPTION above, confess the offense charged, and enclose payment in the amount of \$ _____.	
<input type="checkbox"/> I HEREBY REQUEST A NONCRIMINAL HEARING on this matter.	
Signature _____	

* approved by the state's District Court Department in January, 1991 for use on and after March 29, 1991 (effective date of C. 470, Acts of 1990)

APPENDIX E

TOWN OF CONCORD, MASSACHUSETTS: LIST OF PROVISIONS SUBJECT TO NON-CRIMINAL ENFORCEMENT PURSUANT TO MGL, c. 40, s. 21D

1. Bicycle Bylaw

Fine Allowed:	\$1.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense and subsequent - \$1.00

2. Pedestrian Control Regulations

Fine Allowed:	\$1.00 and \$2.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st, 2nd, 3rd offense - \$1.00 4th, 5th, and subsequent - \$2.00

3. Taxi-cab rules and regulations

Fine Allowed:	\$20.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense and subsequent - \$20.00

4. Smoking in Public Place By-law

Fine Allowed:	\$25.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense and subsequent - \$25.00

5. Alcoholic Beverage By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense and subsequent - \$50.00

6. Hunting By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense and subsequent - \$50.00

7. Peeping By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense and subsequent - \$50.00

8. Private Digging of Road By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Building Inspector
Fine Schedule:	1st offense and subsequent - \$50.00

Appendix E (continued)

9. Unregistered Motor Vehicle

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 30 days after notice; 3rd and subsequent - \$50.00

10. Signs and Advertising Devices By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Building Inspector
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 fine after 90 days notice; 3rd offense and subsequent - \$50.00

11. Zoning By-law

Fine Allowed:	\$100.00
Enforcement Agent:	Building Inspector
Fine Schedule:	1st offense - warning; 2nd offense - \$50.00 3rd offense and subsequent - \$100.00

12. Animals By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

13. Cabins, Overnight, or Tourist By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Building Inspector
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

14. Conservation Land Rules and Regulations

Fine Allowed:	\$100.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

15. Dog By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Dog Officer and Police Officers
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

Appendix E (continued)

16. Internal Combustion Engine on White Pond By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

17. Motor Boat By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

18. Outdoor Fire and Camping By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

19. Public Parks, Ways, Playground, and Places

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

20. Snow and Recreational Vehicles

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

21. Snow and Ice By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense - warning; 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

22. Soliciting By-law

Fine Allowed:	\$50.00
Enforcement Agent:	Police Officers
Fine Schedule:	1st offense - warning 2nd offense - \$25.00 3rd offense and subsequent - \$50.00

APPENDIX F

PROCEDURES GUIDE: NON-CRIMINAL METHOD OF DISPOSITION FOR VIOLATION OF BY-LAWS, RULES, AND REGULATIONS

If issuing a citation for a non-criminal violation:

1. Explain to the offender that you believe a violation of a town by-law, rule or regulation has occurred.
2. Explain to the offender that in the exercise of discretionary power given to you as an enforcement officer for this specific provision that you intend to issue a non-criminal "ticket" (citation) rather than seek a criminal complaint.
3. Explain the procedures which are available to the offender under this process. Note that these procedures are printed on the citation form.
4. Pick up the lower end of one complete set of citation forms, and place both the cardboard cover and the metal cover beneath the set.
5. Using a ball point pen, press down hard (to assure that multiple copies are readable) and fill in the blank spaces:
 - name and address of offender
 - the designation of the specific section of the by-law, rule or regulation which was violated (e.g., Article 7, Section 7 - General By-laws). Refer to the cover of the citation book which contains a complete listing of all sections covered by non-criminal procedures.
 - enter the description of the act constituting the offense, as it is printed on the citation book cover (e.g., consumption of alcoholic beverages on public property).
 - enter the time, date, and place of occurrence
 - sign your name to the notice
 - request that the offender sign his/her name indicating receipt of a copy of the notice, explaining, if necessary, that the signature is not an admission of guilt.
 - if the offender refuses to sign, so indicate on the form.
6. Give the offender a copy of the citation, explain again the procedures to be followed; note that procedures are printed on the citation form.
7. If the offender refuses to accept the form, or if for any other reason you are unable to give a copy of the citation to the individual in person, you may mail or otherwise deliver a copy to them. (NOTE: The notice may be delivered or mailed by the enforcing person, the commanding officer, or the head of the enforcing person's department, within 15 days after the said violation to the last known address of the offender. A certificate

Appendix F (continued)

of the person so mailing a copy shall be prima facie evidence of such mailing.)

8. Two copies of the citation (one for the district court, one for the town's records) must be dropped off at the Police Department (or with the town's designated coordinator) within twenty-four hours. It is good practice, if at all possible, to leave all citations at the police department (with the coordinator) at the end of each working day.
9. An incident report summarizing the circumstances in which you have issued each citation must be prepared by you at the time the notice of the violation is prepared. Keep this summary available until you are advised that it is no longer needed. If the offender requests a hearing, or if a criminal complaint is later sought, it will be necessary to have this a contemporary record of what happened.

APPENDIX G

CONTROL LIST

NON-CRIMINAL DISPOSITION OF VIOLATIONS OF TOWN BY-LAWS, RULES, AND REGULATIONS

CITATIONS NUMBERED _____ TO _____

ISSUED TO: _____ (NAME AND TITLE OF ENFORCING PERSON)

citation number	Name and Address of Offender	Offense Committed	Date Issued	Date Due (+ 21 days)	Fine Applicable	Action Taken